

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: January 13, 2006

TO : Richard L. Ahearn, Regional Director
Region 19

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: UNITE HERE Local 8 (Sunset Bowling) 536-2581-3307-0000
Case 19-CB-9322 536-2581-3307-5010
536-2581-3356-0000

This case was submitted for advice as to whether the Union violated Section 8(b)(1)(A) by failing to advise bargaining unit employees of their General Motors¹ right to refrain from joining the Union. We conclude that the Union took reasonable steps to notify employees of their General Motors rights by distributing a notice to employees comparing the the different dues-paying obligations of members and nonmembers, and by stating that their only responsibility under the union security clause is the payment of dues or equivalent fees.

FACTS

UNITE HERE Local 8 represents a bargaining unit composed of waiters, waitresses, bartenders, cooks, fry cooks, cook's helpers, fixers, and dishwashers employed by Sunset Bowling and Recreation at its Seattle, Washington location. A collective-bargaining agreement covering that unit expired on May 31, 2005; the parties have subsequently engaged in negotiations for a successor agreement.

The expired collective-bargaining agreement contained a union-security clause that obligates employees to become members in good standing within 31 days of their hire date. The Union mails to each bargaining unit employee, when he/she is hired, an information packet that includes a notice about the union security clause and dues deduction authorization. That notice does not explicitly state that an employee has the right to refrain from joining the Union as a member. The notice does clearly state that the payment of dues or fees to the Union is an employee's "only obligation under the union security clause." It further provides that "[i]ndividuals who are members pay dues while individuals who are nonmembers pay an equivalent fee." The notice also explains that "nonmembers" may file objections to the Union's expenditures that are not germane to its collective bargaining responsibilities, and that

¹ NLRB v. General Motors Corp., 373 U.S. 734 (1963).

"nonmembers" may obtain from the Union a description of the method by which to file objections. Finally, the second paragraph of the three-paragraph notice is dedicated entirely to a description of the benefits of Union membership to which "[n]onmember fee payers" are not entitled.

ACTION

We conclude that the Union did not violate the Act because it took reasonable steps to notify employees of their General Motors rights by distributing a notice to employees comparing the union security obligations of members and nonmembers and stating that an employee's only contractual responsibility is the payment of dues or equivalent fees.

A union breaches its duty of fair representation if it fails to notify unit employees of their right under General Motors to become or remain financial core members of the union.² The Board does not prescribe the form of this notice and no magic words are required. Rather, a union's publication of a General Motors notice is sufficient if it is "reasonably calculated to apprise the non-member employees of their Beck [and, concomitantly, their General Motors] rights."³

We conclude that the Union's notice to employees at issue here is sufficiently clear and, thus, "reasonably calculated" to apprise employees of their General Motors rights. The notice explains the differences between membership and non-membership in the union - and thereby indicates the availability of non-membership - by explicitly

² Rochester Mfg. Co., 323 NLRB 260 (1997), enfd. 194 F.3d 1311 (6th Cir. 1999)(table). See also Paperworkers, Local 1033 (Weyerhauser), 320 NLRB 349, 350 (1995), revd. on other grounds sub nom. Buzenius v. NLRB, 124 F.3d 788 (6th Cir. 1997) (union breaches duty of fair representation when it fails to provide unit employees, whether members or nonmembers, with notice "of the statutory limits on union-security obligations" as set forth in General Motors prior to obligating them to pay dues under a union security clause).

³ California Saw & Knife Works, 320 NLRB 224, 234 n.55 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998). See also Paperworkers, Local 1033 (Weyerhauser), 320 NLRB at 350, citing California Saw, 320 NLRB at 233 (union satisfies its General Motors obligation so long as it takes "reasonable steps" to notify employees of their rights).

stating that "[i]ndividuals who are members pay dues while individuals who are nonmembers pay an equivalent fee." The notice further indicates that full membership and its associated duties and responsibilities is not required by explaining that the payment of dues or fees to the Union is an employee's "only obligation under the union security clause" (emphasis supplied). Despite the absence of an explicit recitation of the right to refrain from Union membership, we conclude that the clear understanding left by the notice language constitutes "reasonable steps" that are "reasonably calculated" to apprise the reader that full membership in the Union is not required.

Our disposition is not affected by the conclusion that a different General Motors notice in UAW, Local 2232 (First Student Bus Company)⁴ did not reasonably state that employees had the right to become or remain nonmembers of that union. The union's notice there merely referred to "nonmembers" in four instances, and only in reference to the union's Beck objections process. The evidence further established that two union agents threatened a large number of bargaining unit employees with the loss of their jobs if they did not become members of the union. The Office of Appeals concluded that the notice language was not a clear statement of employees' right to choose nonmembership and that this lack of clarity was only emphasized by the union agents' coercive and unlawful statements that employees had to join that union in order to retain their jobs. Under those circumstances, Appeals concluded that the notice was not reasonably designed to inform employees of their rights to become or remain nonmembers.

In contrast, the notice here goes further than the First Student notice to apprise employees of their General Motors rights. Rather than simply mentioning "nonmembers," the Union here specifically explained the difference between members who "pay dues" and nonmembers who "pay an equivalent fee." The Union further emphasized that the payment of either amount constitutes the "only" obligation under the union security clause. Moreover, the Union made these assertions in an atmosphere free of the misrepresentations that contributed to the finding of confusion and coercion in the First Student case.

⁴ Significant Appeals Minute in Cases 1-CB-10090-1 & 1-CB-10092-2, dated April 6, 2004.

Accordingly, we conclude that the Union here has taken "reasonable steps" to apprise employees of their General Motors rights to choose nonmembership in the Union. Thus, the Region should dismiss this charge, absent withdrawal.

B.J.K.